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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

February 28, 1997

Hand Delivered

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Petition for Waiver

Dear Mr. Caton:

Transmitted herewith, on behalf of Leaco Rural Telephone Cooperative, Inc., are an original and four copies of its Petition for Waiver.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Michael S. Fox
Director Regulatory Affairs

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the) CC Docket No. 96-149
Communications Act of 1934, as amended)
)
Regulatory Treatment of LEC Provision)
of Interexchange Services Originating in the)
LEC's Local Exchange Area)

Petition for Waiver

Leaco Rural Telephone Cooperative, Inc. ("Leaco") hereby requests a waiver of the existing separation requirements established by the Federal Communications Commission ("Commission") in its *Competitive Carrier Fifth Report and Order*.¹ These separation requirements are currently a prerequisite for independent local exchange companies ("LECs") to qualify as non-dominant carriers in the provision of interstate, domestic and international interexchange services originating in their local exchange areas. It is contrary to the public interest to require Leaco to comply with these separation requirements in order to obtain non-dominant status for their interstate and international long distance resale operations.

Leaco is a cooperative local exchange company in eastern New Mexico serving approximately 2200 member subscribers over an area of 3700 square miles. Leaco prides itself on providing state of the art telecommunications services to its members and, as such, is currently planning to offer interstate and international interexchange service to its members. The separate affiliate requirements established in 1984 within the Fifth Report and Order are no longer appropriate for today's telecommunications environment and, therefore, do not further any public interest.

In the Fifth Report and Order, the Commission determined that, in order to qualify for non-dominant treatment, an independent LEC must provide interstate and international interexchange services through an affiliate² and that such affiliate must: "(1) maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliate exchange telephone company; and (3) acquire any services from its affiliated exchange telephone company

¹ See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252; Fifth Report and Order, 98 FCC 2d 1191 (1984) ("Fifth Report and Order").

² In the Fifth Report and Order, the Commission defined an "affiliate" of an independent LEC as "a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company." (Fifth Report and Order at 9).

at tariffed rates, terms and conditions.”³ These separation requirements were justified by the Commission on the grounds that independent LECs possess market power relative to their service areas and that such requirements were necessary to protect the public against cost-shifting and anti-competitive conduct by the independent LEC.

While these concerns may have been well founded when the Commission issued the Fifth Report and Order, they are no longer valid in today’s competitive environment. Leaco simply will not have the motivation nor the capability to utilize their local exchange or interexchange operations to the benefit of the other. The Commission’s own Part 64 rules direct local exchange carriers in how they are to allocate costs between regulated and nonregulated operations. Furthermore, as a local exchange carrier regulated by the New Mexico State Corporation Commission, Leaco cannot raise local rates to subsidize its interexchange operation. The New Mexico State Corporation Commission carefully reviews any local rate increase request and would not approve such a filing without extensive cost support and justification. Finally, as a resale interexchange carrier, Leaco will not be able to obtain any favorable access treatment from its local exchange operations. Leaco’s interexchange operation will be paying a fee to its underlying facilities-based carrier, which will in turn pay access to Leaco’s local exchange operations. Therefore, any favorable access treatment afforded to Leaco’s underlying facilities-based carrier would have to be made available to all other interexchange carriers.

In light of the passage of the Telecommunications Act of 1996⁴ (the “1996 Act”), and its emphasis on encouraging competition in all telecommunications markets, it is no longer realistic to consider that a small local exchange carrier, like Leaco, could possess any degree of market power vis-à-vis its competitors. With the passage of the 1996 Act, telecommunications giants such as AT&T and MCI will be competing for local exchange, interstate, intrastate, and international services. The ability to market and bill for all services is preferred by most customers today for service and billing problem resolutions. Leaco currently bills for giants such as AT&T and MCI, but does not have access to calling plans or resolutions to billing problems. Leaco has to refer the customer to the appropriate carrier for resolution. Since the take-back of rating and recording for these carriers, Leaco has experienced customer dissatisfaction due to the inability to resolve problems for its customers.

Leaco cannot compete with telecommunications giants like AT&T and MCI, which by contrast, are not required to provide local exchange and interexchange services with affiliate companies for separation purposes. This will place Leaco at a competitive disadvantage and is not in the spirit of the 1996 Act or in the public interest. As a result, Leaco should be regulated as a non-dominant carrier, without the separate affiliate requirements. Further, this action is entirely appropriate and consistent with the Commission’s responsibilities under new Section 10(a) of the Communications Act⁵. Section 10(a) provides the Commission with the duty to forbear from applying any regulation if: (1) the regulation is unnecessary to ensure that charges and practices are just and reasonable; (2) enforcement of such regulation is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the

³ Fifth Report and Order at 9.

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ Codified at 47 U.S.C. § 10(a).

public interest. The changes associated with the 1996 Act prove that an independent LEC, like Leaco, can no longer (if it ever could) be considered a dominant carrier when compared to its competitors in what is increasingly a geographically broad and integrated services marketplace.

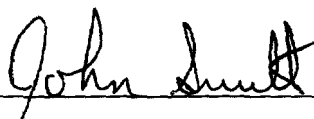
Dominant carrier regulation of independent LECs, like Leaco, is no longer in the public interest. Leaco is regulated by both the New Mexico State Corporation Commission and the Federal Communications Commission. Therefore, it is imperative that Leaco have the flexibility to compete with national telecommunications service providers that are lightly regulated at the federal level. It is incomprehensible that a global corporate giant like AT&T is regarded as a non-dominant carrier, while Leaco, with only 2200 member customers, is classified as a dominant carrier.

Dominant carrier regulation, in a competitive marketplace, inhibits companies like Leaco from quickly responding to competitive pressures. The Commission should regulate Leaco's integrated offering of interexchange services as non-dominant because Leaco possesses essentially no market power in this rapidly evolving market for ever expanding service offerings. Leaco simply is incapable of setting rates at unreasonable levels that would promote predatory pricing; competitors such as AT&T and MCI would not allow this to happen.

Therefore, Leaco respectfully requests that the Commission forbear from regulating its interstate, domestic and international interexchange service as dominant. Further, Leaco petitions the Commission for a waiver of the separate affiliate requirements for non-dominant status as established by the Fifth Report and Order. These separate affiliate requirements are no longer necessary and, indeed, are counterproductive to the promulgation of competition in the telecommunications industry.

Respectfully submitted,

**LEACO RURAL TELEPHONE
COOPERATIVE, INC.**

A handwritten signature in dark ink, appearing to read "John Smith", is written over a horizontal line.

John Smith
Executive Vice President and General
Manager